OCT 7 1996

# STATE OF ARIZONA

DEPT OF INSURANCE BY TO

#### DEPARTMENT OF INSURANCE

2	DEPARTMENT OF INSURANCE
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4	In the Matter of:  Docket No. 96A-107-INS
5	ROBERT MARTINEZ, JR. ) ORDER
6	Applicant. )
7	) )
8	
9	On September 25, 1996, the Office of Administrative Hearings, through Administrative
10	Law Judge Robert I. Worth submitted "Decision and Recommended Order", a copy of which is attached
11	and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed
12	the recommendation, and enters the following order:
13	The recommended findings of fact and conclusions of law are adopted.
14	2. The prior denial action by the Department is affirmed and the application for a Bai
15	Bond Agent licensed filed by Robert Martinez, Jr., is denied.
16	NOTIFICATION OF RIGHTS
17	The aggrieved party may request a rehearing with respect to this Order by filing a written
18	petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth
19	the basis for such relief pursuant to A.A.C. R20-6-114(B).
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2	The final decision of the Director may be appealed to the Superior Court of Maricopa
3	County for judicial review pursuant to A.R.S. § 20-166.
4	EFFECTIVE thisday of October, 1996.
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6	I have tries and
7	John King Director of Insurance
8	
9	A copy of the foregoing mailed this 746 day of October, 1996
10	
11	Charles R. Cohen, Deputy Director Catherine O'Neil, Assistant Director
12	John Gagne, Assistant Director Scott Greenberg, Business Manager
13	Maureen Catalioto, Supervisor  Department of Insurance
14	2910 North 44th Street, Suite 210 Phoenix, AZ 85018
15	Office of Administrative Hearings
16	1700 West Washington, Suite 602 Phoenix, AZ 85007
17	Kathryn Leonard
18	Assistant Attorney General 1275 West Washington
19	Phoenix, AZ 85012
20	Robert Martinez, Jr. 2601 W. Broadway, #L-596
21	Tucson, AZ 85705
22	Gosemany D. Padilla
23	

## IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 96A-107-INS

ROBERT MARTINEZ, JR.

**Applicant** 

**DECISION AND RECOMMENDED ORDER** 

The above-entitled matter came on for hearing on September 24, 1996 pursuant to advance notice duly sent to all parties. The Arizona Department of Insurance (herein called the "Department") was represented by Assistant Attorney General, Kathryn Leonard, and the named Applicant failed to appear. Evidence was presented and based upon the entire record, the following Findings of Fact, Conclusions of Law and Recommended Order have been prepared and are hereby submitted by the undersigned Administrative Law Judge for review, consideration, approval and adoption by the Director of the Department (herein called the "Director").

### **FINDINGS OF FACT**

- 1. The Department's uncontroverted documentary evidence established that Robert Martinez, Jr. prepared and filed a written application for a Bail Bond Agent license, expressly answering two separate questions about his prior criminal history in the negative.
- 2. The aforesaid questions on the application related to whether Mr. Martinez had ever been convicted of any misdemeanor and whether he had even been arrested, questioned, taken into custody, charged with, tried for or been the subject of an investigation concerning a felony or misdemeanor violation. Notwithstanding his negative answers to each

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question, the evidence revealed that on April 28, 1993, Mr. Martinez was convicted, pursuant to a plea of guilty, of attempted hindering of prosecution in the second degree, a Class 2 misdemeanor, committed on October 24, 1992. A sentence was imposed to pay a fine and a fee in the aggregate amount of \$37.00. Prior in time to the date of such conviction and sentence, but coinciding with the date that the underlying misdemeanor actions were committed, Mr. Martinez was shown to have been questioned and subsequently arrested and charged with promoting prison contraband. Both of the foregoing incidents related to Applicant's actions or inaction with respect to ongoing investigations and inquiries involving felony drug possession offenses committed by his father, Robert Martinez, Sr., who at that time was an inmate serving a prison sentence.

- 3. The non-disclosures by Mr. Martinez (Jr.) of either of the above-described incidents are found to have been knowing and willful misrepresentations on his part of material facts of which the Department had a right to be informed prior to any issuance of the license applied for herein.
- 4. By his failure to attend and participate in the scheduled hearing, despite his express request for the convening of same, the individual named Applicant presented no evidence in defense or in mitigation of the charged wrongdoing which formed the basis for the Department's denial action. Especially in light of the fact that, under applicable statutory provisions, the Applicant has the burden of proof as to his entitlement for licensure, no valid reason is found to exist for disturbing the Department's

previous determination that the application submitted by Mr. Martinez should be denied.

#### **CONCLUSIONS OF LAW**

- 1. The Director has jurisdiction over this matter pursuant to the provisions of A.R.S. §§20-161 and 20-290.
- 2. The undisputed evidence of record adequately established that Robert Martinez, Jr. submitted an application to the Department containing material misrepresentations of facts that were required to be disclosed, in violation by said Applicant of the provisions of A.R.S. § 20-291 (G).
- 3. Mr. Martinez has not sustained his burden of proof so as to establish his entitlement to be issued the Bail Bond Agent license applied for. On the contrary, grounds were shown to exist for the Department to deny the within license application pursuant to A.R.S. § 20-290 (B) (1).

#### **RECOMMENDED ORDER**

In view of the foregoing, it is recommended that the prior denial action by the Department be affirmed and that the Director enter his Order denying the application for a Bail Bond Agent license filed by Robert Martinez, Jr.

Dates: September 25, 1996.

OFFICE OF ADMINISTRATIVE HEARINGS

Robert I. Worth

Administrative Law Judge

Original 9/25/96

Experimental on 9/25/96

by Wis Crawford; to:

John King, Director Department of Insurance 2910 North 44th Street, #210 Phoenix, AZ 85018-7256

ATTN: Curvey Burton